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8 **UNITED STATES DISTRICT COURT**

9 **EASTERN DISTRICT OF CALIFORNIA**

10  
11 GEORGETTE G. PURNELL,

12 Plaintiff,

13 v.

14 SUITE ONE REAL ESTATE SERVICES,

15 Defendant.

16 Case No. 1:22-cv-01300-AWI-SAB

17 **FINDINGS AND RECOMMENDATIONS**  
18 **RECOMMENDING DISMISSAL FOR LACK**  
19 **OF JURISDICTION, WITHOUT PREJUDICE**  
20 **TO REFILING IN STATE COURT**

21 (ECF No. 1)

22 **FOURTEEN-DAY DEADLINE**

23 Plaintiff Georgette G. Purnell (“Plaintiff”), proceeding *pro se* and *in forma pauperis*,  
24 initiated this civil action on October 12, 2022, against Defendants Suite One Real Estate Services  
25 and Matthew Dahman (collectively, “Defendants”). (ECF No. 1.) On November 10, 2022, the  
26 Court granted Plaintiff’s motion to proceed *in forma pauperis* but directed that service not be  
27 undertaken until it screened the complaint and issued a screening order. (ECF No. 5.) The  
28 complaint is now before this Court for screening. Having considered the complaint, the Court  
issues the following screening order and findings and recommendations recommending that the  
complaint be dismissed for lack of subject matter jurisdiction, and that this action be dismissed  
without prejudice to refiling in state court.

I.

## **SCREENING REQUIREMENT**

In connection with proceedings *in forma pauperis*, 28 U.S.C. § 1915(e)(2) instructs the Court to dismiss a case at any time if the Court determines that the action is frivolous or malicious, fails to state a claim on which relief may be granted, or that seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B). Further, the Court has an independent duty to ensure it has subject matter jurisdiction in the case. See United Investors Life Ins. Co. v. Waddell & Reed Inc., 360 F.3d 960, 967 (9th Cir. 2004).

The legal standard for dismissing a complaint as frivolous, malicious, or for failure to state a claim pursuant to § 1915(e)(2) is identical to the legal standard used when ruling on a Federal Rule of Civil Procedure (“Rule”) 12(b)(6) motion. See, e.g., Hodge v. Murphy, 808 F. Supp. 2d 405 (D.R.I. 2011). A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief ....” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal (Iqbal), 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly (Twombly), 550 U.S. 544, 555 (2007)). “Vague and conclusory allegations of official participation in civil rights violations are not sufficient ....” Ivey v. Bd. of Regents of the Univ. of Alaska, 673 F.2d 266, 268 (9th Cir. 1982). To survive screening, Plaintiff’s claims must be facially plausible, which requires sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable for the misconduct alleged. Iqbal, 556 U.S. at 678–79; Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009). The “sheer possibility that a defendant has acted unlawfully” is not sufficient, and “facts that are ‘merely consistent with’ a defendant’s liability” falls short of satisfying the plausibility standard. Iqbal, 556 U.S. at 678; Moss, 572 F.3d at 969. Nonetheless, *pro se* pleadings must be liberally construed. See Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted).

As a general rule, the Court must limit its review to the operative complaint and may not consider facts presented in extrinsic evidence. See *Lee v. City of L.A.*, 250 F.3d 668, 688 (9th

1 Cir. 2001). Materials submitted as part of the complaint, however, are not “outside” the  
2 complaint and may be considered. Id.; Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc., 896  
3 F.2d 1542, 1555 n.19 (9th Cir. 1990). Moreover, the Court is not required to accept as true  
4 conclusory allegations which are contradicted by exhibits to the complaint. See Sprewell v.  
5 Golden State Warriors, 266 F.3d 979, 988 (9th Cir. 2001), amended on denial of reh’g, 275 F.3d  
6 1187 (9th Cir. 2001); Steckman v. Hart Brewing, Inc., 143 F.3d 1293, 1295–96 (9th Cir. 1998).  
7 Leave to amend may be granted to the extent that the deficiencies of the complaint can be cured  
8 by amendment. Cato v. U.S., 70 F.3d 1103, 1106 (9th Cir. 1995).

## 9 II.

### 10 COMPLAINT ALLEGATIONS

11 The Court accepts Plaintiff’s allegations as true only for the purpose of the *sua sponte*  
12 screening requirement under 28 U.S.C. § 1915.

13 Plaintiff brings this civil action against her landlord, Suite One Real Estate Services  
14 (“Suite One”), and her real estate agent, Matthew Dahlman (“Dahlman”), who she alleges is the  
15 acting agent for Suite One. (ECF No. 1 at 1, 2.) Plaintiff alleges the Court has jurisdiction over  
16 this action because all parties reside within the Court’s jurisdiction. (Id. at 2.)

17 The factual allegations in support of Plaintiff’s action are asserted in the declaration  
18 attached to the complaint. (Id. at 3–4.) Plaintiff alleges she communicated with Dahlman via text  
19 message on September 6, 2022, regarding the real property at 1526 N. Palm Avenue, Fresno, CA  
20 93218. (Id. at 3.) On September 10, 2022, Plaintiff provided her signature via electronic mail for  
21 purposes of leasing and moving into the property. (Id.) On September 11, 2022, Plaintiff signed  
22 the lease, which was to take effect on September 12, 2022. (Id.) Plaintiff received a key for the  
23 property on September 12, 2022. (Id.) Plaintiff paid Dahlman \$2,000 before she entered the  
24 property. (Id.) Plaintiff alleges that, upon entering the property for the first time, she discovered  
25 a “number of concerns” not previously disclosed to her by Dahlman. (Id.) Plaintiff alleges these  
26 concerns were health and security-related. (Id.) Plaintiff then contacted Dahlman and requested  
27 the rental transaction be reversed and her \$2,000 be returned, due to the previously undisclosed  
28 concerns she discovered at the property. (Id.) Dahlman denied this request. (Id.) Plaintiff

1 maintains she never consummated the lease because she never moved onto the property. (Id.)  
2 She indicates Defendants' actions caused her emotional distress. (See id. at 1.) She seeks  
3 compensatory and punitive damages in the amount of one million dollars. (Id. at 4.)

4 **III.**

5 **DISCUSSION**

6 For the reasons discussed herein, the Court finds it lacks subject matter jurisdiction over  
7 this action. There are two bases for federal subject matter jurisdiction: (1) federal question  
8 jurisdiction under 28 U.S.C. § 1331, and (2) diversity jurisdiction under 28 U.S.C. § 1332.

9 **A. Federal Question Jurisdiction**

10 A district court has federal question jurisdiction in "all civil actions arising under the  
11 Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. The "presence or absence  
12 of federal question jurisdiction is governed by the 'well-pleaded complaint rule,' which provides  
13 that federal jurisdiction exists only when a federal question is presented on the face of the  
14 plaintiff's properly pleaded complaint." Caterpillar, Inc. v. Williams, 482 U.S. 386, 386 (1987).

15 Here, the complaint does not identify any particular cause of action against Defendants,  
16 but is merely labeled a "civil complaint alleging money owed Plaintiff by Defendants resulting in  
17 emotional distress." (ECF No. 1 at 1.) Nonetheless, the facts alleged demonstrate the claim or  
18 claims presently at issue arise from state landlord-tenant law: that is, Plaintiff appears to seek  
19 recission of her lease and refund of the money she paid, based on certain conditions at the  
20 property which presented "security and health concerns," and which Plaintiff suggests the real  
21 estate agent had a duty to disclose in advance of executing the lease agreement. For Plaintiff's  
22 suit to "arise under" federal law, Plaintiff's "statement of [her] own cause of action" must  
23 "show[] that it is based upon [federal law]." See Vaden v. Discover Bank, 556 U.S. 49, 60–62  
24 (2009). Because the complaint concerns a real property lease and matters arising under California  
25 landlord-tenant law, the action does not arise under federal law. The complaint, therefore, does  
26 not establish federal question jurisdiction.

27 **B. Diversity Jurisdiction**

28 A district court has diversity jurisdiction "where the matter in controversy exceeds the

1 sum or value of \$75,000, ... and is between citizens of different states, or citizens of a State and  
2 citizens or subjects of a foreign state ...." 28 U.S.C. § 1332(a)(1)–(2). The burden of proving the  
3 amount in controversy depends on the allegations in the plaintiff's complaint. See Lowdermilk v.  
4 U.S. Bank Nat'l Ass'n, 479 F.3d 994, 998–1000 (9th Cir. 2007). When the complaint alleges  
5 damages less than the jurisdictional requirement, the party seeking to establish diversity  
6 jurisdiction must prove the amount in controversy with legal certainty. Id.; Rynearson v.  
7 Motricity, Inc., 601 F. Supp. 2d 1238, 1240 (W.D. Wash. 2009).

8 Here, Plaintiff asserts the amount in controversy exceeds \$75,000 because she is seeking  
9 damages in the amount of one million dollars. However, the factual allegations only identify  
10 damages in the amount of \$2,000. More importantly, Plaintiff has not met her burden of  
11 establishing complete diversity between the parties named in the lawsuit because she does not  
12 allege the parties are citizens of different states; to the contrary, Plaintiff alleges the parties all  
13 reside within this Court's jurisdiction, that is, the Eastern District of California. (ECF No. 1 at 2.)  
14 Accordingly, Plaintiff has not met her burden to establish diversity jurisdiction exists in this case.  
15 Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992).

16 **C. Supplemental Jurisdiction**

17 Finally, although the Court may exercise supplemental jurisdiction over state law claims,  
18 Plaintiff must first have a cognizable claim for relief under federal law, which, for the reasons  
19 previously explained, she does not. See 28 U.S.C. § 1337. Accordingly, the Court declines to  
20 address the potential viability of any state law claims at this time.

21 **IV.**

22 **CONCLUSION AND RECOMMENDATIONS**

23 For the foregoing reasons, because the complaint indicates Plaintiff's only potential  
24 claims arise solely under state law, this action does not arise under federal law. Similarly,  
25 because Plaintiff has not met her burden of establishing that there is complete diversity between  
26 the parties named in the suit, the Court also does not have diversity jurisdiction. Further, based  
27 on the facts alleged here, the Court finds amending the complaint would not cure the identified  
28 jurisdictional deficiencies. Cato, 70 F.3d at 1106; see also Gardner v. Martino, 563 F.3d 981, 990

1 (9th Cir. 2009) (“When a proposed amendment would be futile, there is no need to prolong the  
2 litigation by permitting further amendment.”). There being no apparent grounds for federal  
3 subject matter jurisdiction, it is appropriate to dismiss this action, without prejudice to refiling in  
4 state court.

5 Accordingly, IT IS HEREBY RECOMMENDED that:

6 1. Plaintiff’s complaint (ECF No. 1) be DISMISSED for lack of federal subject  
7 matter jurisdiction;

8 2. The action be dismissed, without prejudice to refiling in state court; and

9 3. The Clerk of the Court be directed to CLOSE this case.

10 These findings and recommendations are submitted to the district judge assigned to this  
11 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court’s Local Rule 304. Within **fourteen**  
12 (**14**) days of service of this recommendation, any party may file written objections to these  
13 findings and recommendations with the Court and serve a copy on all parties. Such a document  
14 should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The  
15 district judge will review the magistrate judge’s findings and recommendations pursuant to 28  
16 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within the specified  
17 time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th  
18 Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

19  
20 IT IS SO ORDERED.

21 Dated: March 8, 2023



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UNITED STATES MAGISTRATE JUDGE